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*The Penal Sanctions of Laws
Consider'd.*

A
S E R M O N

Preach'd at St. *MART's*

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694. 9. 24.
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O X F O R D,

At the *ASSIZES*,

Before the Honourable

Mr. Justice *REYNOLDS*;

A N D.

Before The *UNIVERSITY*;

On *Thursday, July 20th. 1727.*

By *JOHN CONYBEARE, M. A.*
Fellow of *Exeter College in Oxford.*

O X F O R D:

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W. Mears near *Temple-Bar*, *LONDON. 1727.*

The Honorable
The Honorable

Charles Talbot Esq

His Majesty's

Solicitor-General

DISCOTSE



With the great of

DEDICATED

Anchor

TO

The Honourable

Charles Talbot Esq;

HIS MAJESTY'S

Sollicitor-General,

THIS

DISCOURSE

IS,

With the greatest Respect

and Humility,

DEDICATED

BY THE

Author.

Honorable

Charles Talbot Esq;

His Majesty's

Solicitor-General

THIS

COURSE

With the greatest Respect

DEDICATED

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 Preach'd
 At St. *MART*'s
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EZRA VII. 26.

*And whosoever will not do the
 Law of thy God and the Law
 of the King, let Judgment be
 executed speedily upon him;
 whether it be unto Death, or
 to Banishment, or to Confisca-
 tion of Goods, or to Imprison-
 ment.*

THE Words which I have read are
 Part of that Commission, which *Ezra*
 receiv'd from the *Persian* King. In
 the former verse he was authoriz'd to appoint
 B proper

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proper Magistrates, who might judge the People agreeably to standing Laws; and in This he is impower'd to support and enforce such Laws, by the *Sanctions* of present Punishment.

The Decrees of the *Civil* Power must frequently abridge Men of that Liberty, which might have been enjoy'd in a State of *Nature*. It ought therefore to be no Matter of Surprise, if Persons, who do not enter into the Reasons of Things, should bear Restraints of this kind with Difficulty and Reluctance. And even in those Cases where Nothing is enacted but what is equally determin'd by their own impartial Reason, They are often tempted to transgress, Either thro' a certain *Perverseness* of Temper; ---or, thro' those *vicious Habits* which they have contracted; ---or, thro' the Prevalency of some impetuous *Passions*; ---or, sometimes perhaps thro' *Wantonness* and *Inattention*. Hence it hath been constantly found that those Laws are useless and ineffectual, which are not enforc'd by the Threats of *Punishment*; and that Magistrates may command in vain, if they are not in like manner arm'd with *Terror*.

Indeed this Point is of so great Importance, that it may be maintain'd, with good Shew of Reason, that Sanctions are *essential* to a Law. And tho' it should happen, thro' the Imperfection of the best human Constitutions, that Obedience may not be sufficiently secur'd by the Appointment of *present* Terrors, yet if the Decrees of *Men* are confirm'd by the Will
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of God, a Disobedience to them must expose us to *Divine Displeasure*.

No human Laws therefore, rightly appointed, can possibly be without a *Sanction*. They are always enforc'd by the Considerations of *Divine Approbation*, or *Displeasure*; and *We must needs be subject*, if not upon account of present *Wrath*, yet at least for *Conscience sake*. Rom. 13. 5.

However, it is too visible, that the Rewards or Punishments of *another Life* have not their due Influence upon Men's Minds. Even those Persons, who profess to *believe* them, act, on many Occasions, *without Regard* to them. Their Senses are sollicit'd by those Objects which are at hand; and their Minds drawn off from giving a proper Attention to the remote Consequences of things. *Because Sentence against an Evil Work is not executed speedily, therefore the Hearts of the Sons of Men are fully set in them to do Evil.*

Lawgivers, upon this Account, have found it necessary to guard their Commands by Civil Terrors;---To oppose the Threats of present *Suffering* against the Engagements of present *Temptations*; and to order that *Punishments* shall immediately follow upon *Disobedience*.

These Observations lead me to discourse concerning *The Penal Sanctions of Laws*: In the Management of which Subject, I shall,

First, Offer some Remarks on the *Nature* and *Design* of Penal Sanctions.

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Secondly,

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Secondly, I shall Enquire into The *Foundation*, on which the *Right* of appointing these Sanctions must be built.

Thirdly, I shall represent The *Necessity* of a regular and vigorous *Execution* of them.
And,

Lastly, Consider some *important Questions*, which arise from the foregoing Particulars.

By *Penal Sanctions* in general we are to understand Those *Punishments*, which are annex'd to the Violation of a Law. And the general *End* and *Design* of them is none other than This; *viz.* To promote Obedience by awakening our *Fears*; and to induce us to discharge our *Duty* by counter-balancing the several *Temptations* to the contrary.

Thus far the Point is clear. But, if we enter more deeply into Particulars, several things will occur which deserve our Notice, and need some sort of Explication.

With reference to the *Nature* of these Sanctions we may observe, that as they are, and must be of very different *Kinds*, so those, which are of the same Kind, may vary in *Degrees*.

The *First*, and most general Distribution is This; Penal Sanctions are either *Temporal*, or *Eternal*. These differ from each other, not only in their *Duration*, but also as to the *Nature* of the Punishments themselves: For the

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One affect immediately our *Senses*,—or are confin'd to some Interests in the *present* Life; but the Other have a more especial Reference to the *Mind*, and will affect our Concerns in the *other* World.

To which we may add This farther remarkable Difference between them; That *Temporal* Sanctions may be appointed and executed by *Men*; but *Eternal* ones can be appointed only by *God*: For, tho' the Punishments of the *next* Life may follow a Disobedience to *Human* Laws, yet This doth not arise from the Appointment of *Men*, but from the Will of *God*: and consequently, These are not properly *Human*, but *Divine* Sanctions.

There is another Division, which we are specially concern'd to remark on this Subject. *Temporal* Sanctions may be either *Ecclesiastical*, or *Civil*.

Those Sanctions which are appointed by the *Church*, may be reduc'd under the following Heads. They consist, Either in depriving Men of some *Church Privileges* to which they were before entitl'd;—or else, in appointing a certain Course of *Discipline* in order to the being restor'd to the Church's Favour;—or else, Lastly, in the *entire Exclusion* of notorious Offenders from the Benefits of *Christian Communion*. The Power of *Ecclesiastical* Magistrates seems to be confin'd within these Bounds.

The *Church* is a Society of a *different* Nature from The *Civil* State; and the End which it proposes to itself is of a *different* Kind:

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Kind: From hence it follows, That the Methods which it hath a Right to use, in order to obtain this End, will likewise be *different*. And if it should happen, in some Instances, that *Civil* Punishments are annex'd to the Violation of *Ecclesiastical* Laws, The Right of inflicting them must evidently be deriv'd from the *Civil* Power; and consequently, *Ecclesiastical* Persons, in the Execution of such Penalties, will sustain the Character even of *Civil* Magistrates.

I would observe farther, with reference to *Ecclesiastical* Sanctions, That altho' in their *direct* and *immediate* Effect, they relate only to our Concerns and Interests in the *visible* Church, yet the Consequences of them may reach much farther. Church Censures no Doubt, in case of Obstinacy and Impenitence, will be follow'd by the Punishments of *another* World: But then we must maintain, That These are *Divine* Sanctions, as depending only on The Will and Appointment of *God*. Upon which it may not be improper to remark thus much by the Way;---That as, on the one hand, no Man's Condition in the *other* World depends on the *arbitrary* Will of Men, (for This is entirely owing to the Disposal of *God* himself)--so on the other, A Disobedience to *Ecclesiastical* Laws, rightly appointed, and a Contempt of that Authority which is deriv'd from *Christ* to Men, will expose us to more than *Human* Terrors.

But I am principally concern'd at present to treat concerning *Civil* Sanctions; which, as they

they are intended to enforce Obedience to the Decrees of the *Civil Power*, ought to be of such a Nature as is suited to obtain this End. And forasmuch as Men are tempted to Disobedience by the Passions and Interests of the *present Life*, The Sanctions annex'd to them should point directly against these Temptations. From hence it appears, that if the Civil Magistrate hath any Right at all to enforce his Commands, He must do it, Either by the Infliction of *sensible Evil*;—or, by depriving Offenders of some *Advantages in Life*;—or else, in extream Cases, even of *Life* itself.

Ezra's Commission, now before us, reckons up four Sorts of Punishment, viz. *Imprisonment, Fines, Banishment, and Death*; To which others might indeed be added, but were needless to be particularly insisted on, as clearly flowing from the same general Reasons, and contributing to the same common End.

I have observ'd before, that the Enforcement of Obedience was the *general Design* of Penalties: But besides this, there are several inferior and *subordinate Ends* propos'd; by attending to which we shall see the Reasons of this *Variety* of Punishments, and their *Usefulness* for the Purposes of Civil Government.

Punishments therefore may serve, Either To *correct and reform* the Offender himself;—or, To *discourage* other Men from a like Disobedience to The Civil Magistrate;—or, To *secure* the Publick from the future Inconveniencies of a misapply'd and abus'd Power;—or

—or, Lastly, To make some sort of *Satisfaction* for those Injuries, which have been caus'd by past Offences. As any of these particular Ends are chiefly in *View*, or most proper to be pursu'd, so different Punishments are generally appointed conformable to them.

Almost every Sort of *Penalties*, excepting those which are of a *capital* Nature, may serve to *correct* Offenders: An End truly worthy of a Good Governour, who will always think himself more concern'd to *reform*, than to *destroy* his Subjects. Severity, in this Case is the greatest *Tenderness* to the very Person who suffers under it; because it is design'd for his real Interests, and to secure him against greater Ills to come.

When Punishments are *publick* and *notorious* (as they ought indeed to be so, where the Crime is publick, and the Example likely to be pernicious) they are the best Evidence to Subjects in general that *The Magistrate will not bear the Sword in vain*; and by striking the Passions in a very lively manner, they discourage bad Men from those Pursuits which are attended with Consequences so fatal.

In many Cases it may happen that The Publick cannot be secur'd against the Attempts of lawless Men, but by taking *all* Power out of their Hands, and depriving them of the very Opportunity of *invading* it. To this purpose all Ages have approv'd the Expediency of *perpetual Imprisonment* in some Instances, and of *utter Banishment* in others: Nor can any thing be more reasonable, than to deprive Offenders

Offenders of those *Liberties* or *Privileges*, which They will not use with *Innocence*, and which cannot be allow'd with *Safety*.

But if Offences are *extreme*, the Criminal incapable of being *reform'd*, and the Example apt to *spread*, in such cases The Magistrate is concern'd to support his Laws by the *Terror* of his Executions. Remedies should always be applied in proportion to the *Malignity* of that Disorder they are design'd to cure: And therefore, Life must evidently be *forfeited* to publick Justice, when the Preservation of it would either enable the Offender himself to do more *Mischief*, or encourage others to imitate his Example by the like Hopes of *Favour*.

Or, if the Damage sustain'd by the Violation of Laws be of such a Nature, as will admit some sort of *Satisfaction*, it may be expedient to pursue this End by the Appointment of *Fines* or *Forfeitures*, suitable to the Nature of the Crime committed, and the Injury to be repair'd. This Method is founded in the greatest *Equity* and *Tenderness*; nor can the Offender himself complain, that he is oblig'd to repair, at his own *Cost*, the Mischiefs occasion'd by his own *Perverseness*.

Having offer'd these Remarks on The Nature and Design of Penal Sanctions, I will proceed now to

The *Second* general Head, viz. To enquire into the *Foundation* on which the *Right* of appointing these Sanctions must be built.

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All Authority of this Nature must be ultimately resolv'd into The Will of God himself, Who, having created Mankind by his Power, and exercising a continual Providence over them, must be invested with an *absolute Right of Dominion*. He may therefore appoint what *Laws* He pleases, and enforce Obedience to them by what *Sanctions* He pleases.

This Derivation of *coercive Power* in Civil Matters, will, I persuade my self, appear exceeding reasonable, if we duly attend to an Argument commonly alledg'd by Writers upon this Subject.

Since all Men (say They) are by Nature equal, it follows, that no Man, meerly as such, can have any Right to *prescribe to*, or to *command* other Men; much less to inflict *extreme* or *capital* Punishments for refusing to comply with his Commands. And since no Man hath such a Right over his own *Life* as to dispose of it at his own *Pleasure*, we must conclude, that however the *several Forms* of Government are owing to *human Institution*, yet the Power of *Life* and *Death* must be deriv'd from some other Cause; it being impossible that single Persons should convey a Power to Governours, which never resided in themselves. If therefore Civil Governours have a *Right* to this Power, (as all sober Men agree) we must resolve it at last into the *Will* of that Being, who is the *Fountain* and *Original* of Power.

The Will and Pleasure of God may be known, Either by positive and exprefs *Revelation*;—or, by the Conclusions of *natural Reason*

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Reason. Now the Authority of Civil Governours to enforce their Laws by suitable *Sanctions*; and, in extream Cases, by *capital Punishments*, will easily appear in Both those Ways of learning the Will of God.

The *Holy Scriptures* do in a Variety of Passages allow and confirm this Authority of The Civil Magistrate, and derive it from the very Original which I have here assign'd. Thus, whilst our Blessed Lord asserts *Pilate's Power of Life and Death* to have been given him from above; John 19. 11. St. Paul maintains, that the Civil Magistrate is *The Minister of God, a Revenger to execute Wrath on him that doth Evil*, Rom. 13. 4.

But, whilst we are confirming this Point from the sacred Writings, we must be careful how we run into extreams; or build the coercive Power of Magistrates entirely on *Divine Positive Institution*: For such a Method will run us on Difficulties impossible to be solved. Upon This Scheme we shall be oblig'd to maintain, that all Exercise of coercive Power is *usurp'd* and *unjustifiable*, which is not founded in such a *Positive Institution*. And, forasmuch as the greatest Part of Mankind, from the earliest Ages, have been utter Strangers to any thing of this Nature, we must assert farther, that This Exercise of Civil Power hath, generally speaking, been *groundless* and *unwarrantable*.

It is true indeed, agreeably to the Observations before offer'd, the Authority of Magistrates receives *Confirmation* from the Re-

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veal'd Will of God: But still, as we are assur'd that Government did subsist before the *Delivery* of these Writings; and as it still subsists amongst those Persons who know nothing of them, we are concern'd to enquire, Whether the Will of God, in this particular, may not be discover'd some other Way.

It cannot be question'd but God wills the *Happiness* of Mankind. It must therefore be agreeable to the *Divine* Will, that Men should pursue this general End in all the Methods directed by sober Reason. And since common *Happiness* cannot be either *promoted*, or *secur'd*, unless by *Society*;---nor *Society* maintain'd, but by *Government*;---nor *Government*, but by a due *Enforcement* of those wholesome Laws which are establish'd, it follows, that the *Will* of God is highly interested in this *Exercise* of Civil Power.

The *Divine Right* of Magistracy is evident in this Way of Reasoning. We deduce it from considering the *Goodness* and *Wisdom* of God. We argue, that if the Supreme Being doth really *intend* our *Happiness*, He cannot but *approve* of those Methods which are necessary to the Attainment of it: and consequently, as a *coercive* Power in Civil Governours is *necessary* to this End, the *Exercise* of such a Power must be clearly founded in the *Will* of God himself.

Thirdly, I am now, under the *Third Head*,

To represent the Necessity of a regular and vigorous *Execution* of those Penalties, which

which are annex'd to the Breach of
Laws.

This directly follows from the general
Observations occasionally offer'd in the former
Part of this Discourse. For, if Laws them-
selves cannot *subsist* without the Appointment
of penal Sanctions, neither can they be *sup-*
ported without a just and vigorous *Execution*
of them. Mere Threats, as soon as they are
understood to be so, lose all their Terror;
and the Penalties, which are entirely neglect-
ed, are no longer *Sanctions* of those Laws they
ought to secure.

This is obvious in the general: But we
may farther and more distinctly prosecute this
Point by observing, that the regular and vi-
gorous *Execution* of penal Sanctions is neces-
sary, both To support the Credit and Autho-
rity of *Governours*;---and To promote the
Peace and Interests of *Society*.

With reference to *Governours* themselves, it
hath been, and ever will be found, that the
Credit of their Administration is best main-
tain'd by a prudent and well-temper'd *Rigour*.
A *Remissness* in the Government, whether it
be owing to *Indolence* of Temper, or an ex-
cessive *Tenderness* towards Offenders, betrays
Weakness, which will not fail to draw after
Contempt. The Possession of Power, with-
out a suitable *Exercise* of it, doth but expose a
Man to greater and more frequent *Insults*;
because it sets him up as a publick Mark to
those licentious Persons, who *despise* that Au-
thority

thority which He knows not how to use

We may observe something like this in common Life, and the most vulgar Instances. The Tenderness of a *Parent* betrays that Authority, which is maintain'd by the Rigour and Severity of a *Master*: and whilst He endeavours, by indiscreet Management, to gain upon the *Affection*, He loses that Honour which is chiefly built on *Fear*.

The Generality of Men must be treated in the same Method of Discipline: They must be kept at an awful Distance; and taught not to presume too far on the *Indolence*, or *Good Nature* of their Governours. Otherwise They will break forth into Acts of *Insolence*; and laugh at those Powers which they presume may be oppos'd with Safety.

But the Evil doth not rest here, since it is farther aggravated by its pernicious Influence on the Peace and Interests of *Society*.

A Remissness as to the *Execution* of Penal Sanctions may be Either *general*, and respect all Laws alike;---or else, it may confine itself to *some particular* Laws.

The former introduces *Anarchy*, and in effect dissolves the whole Frame of Government for Government itself cannot be supported but by a due *Enforcement* of those Laws which are enacted by it. Hence it hath been observ'd that a *negligent* or *weak* Administration hath prov'd more pernicious to the general Society, than a *severe* and *cruel* one; because the Sacredness of Laws is entirely betray'd by such *indolent* Management; the good Order

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Society dissolv'd; and the particular Members
 let loose upon one another. It is of less fatal
 Consequence that a few should be oppress'd,
 than all corrupted;—To be expos'd even to
 the Tyranny of our Governours, than to the
 mad and unbridl'd License of The Multi-
 tude.

I will pursue this Point no farther: but
 chuse rather to observe the pernicious Effects
 of remiss Government with relation to some
 particular Laws.

It is evident (as I have had Occasion to
 observe before) that the Force and Effect of
 those Laws, which are not maintain'd with
 some sort of Rigour, will be disappointed; and
 all the Advantages which might arise from a
 due Obedience to them must be lost. This
 will be some Prejudice to the Publick, tho'
 we should allow that such neglected Laws
 are of a lower Kind, and of less Impor-
 tance.

But, beyond this, other Prejudices will a-
 rise, which at first Sight we may not be apt
 to consider. There is a certain Connexion be-
 tween One Part of Duty and every Other
 part of it; so that He who takes the Liberty
 to violate One, will be tempted to make too
 bold with Others. There is no maintaining
 a uniform Obedience in greater Points, with-
 out insisting, in a due Proportion, on paying
 Obedience in lesser ones. A Remissness there-
 fore, even in These particulars, is prejudicial
 to that Discipline which is usefull, and even
 necessary in Government: And he who would
 support

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support his Authority in *any* Case, must exact Obedience in *all*.

The Petulancy of Offenders will be ever growing, unless kept within the narrowest Bounds: And tho' the evil Consequences of it should not appear immediately, yet in Time it will not fail to discover itself in the most important Instances. Hence it hath come to pass, that those *Strictnesses*, which were readily exercis'd in former Times, have, by gradual Abatements, fallen at length into utter *Disuse*; and we complain that *The Times* will not bear some Rigours, which *ought not* to have been dropt, and which *cannot* be restor'd.

It would be easy to enlarge upon this Point. But should I prosecute it, so far as the Subject might perhaps deserve, I should have less Time to consider those Questions, which I propos'd to handle under my

Last general Head. These are such as either relate to *Magistrates*;—or else, to *Subjects*.

We may Enquire therefore, *First*, How far Magistrates are bound, by the Considerations before alledg'd, to stick to the *Rigour* of Law in the *Execution* of Penalties. And,

Secondly, How far Subjects may be thought to have discharg'd their Conscience, by submitting barely to *Penalties*, without paying an *active Obedience* to Laws.

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With reference to the former Question, Thus much is exceeding evident, That the Supreme Power must necessarily have a Right to abate the Rigour of Penalties, and to remit the Execution of its Laws.

It will farther appear, That such a Conduct as this may, in some Instances, be proper and expedient; not only, from considering the Imperfection of the best human Appointments, (which, however reasonable in the general, may yet bear hard in particular Cases,) but also, because the Condition of Offenders may be such, as will rather entitle them to Favour, than demand Severity.

The Expediency of such a Conduct makes it necessary that a discretionary Power of this Kind should be lodg'd in those Persons, who are appointed to execute the Laws; because otherwise, sufficient Room will not be allow'd to consider extraordinary Cases, or to mingle Mercy with the Administrations of Justice.

Nor is it any sufficient Objection against such a Power, that it may possibly be carried too far; since greater Inconveniences must arise from executing the Laws, on all Occasions, in full Rigour, than will probably ever happen from such a Power as I am now speaking of. The Question therefore is reduc'd to This; How far it may be proper, in some particular Cases, to abate the Rigour of Laws.

This Point may, I conceive, be clearly determin'd by considering the End, Either of Laws, or of Penalties. The End of Laws is

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the *Good* of the *Society*, as the *End* of *Penalties* is *Obedience* to the *Laws*. It may be expedient therefore to use tender Methods, where such a *Conduct* will best answer these *Ends*; or, at least, is consistent with them.

Thus for Instance: If *common Good* be the very *End* for which *Laws* themselves were enacted, Nothing can be more reasonable than to *remit* the *Execution* of them in those Instances, in which these *Laws* may be *injurious* to the *Publick*: and Cases of this Kind would doubtless have been *excepted* out of the general *Rule*, had The *Legislators* themselves *foreseen* them.

Room also there may be for *Favour*, where no publick *Mischief* is occasion'd by the *Transgression*; because *Laws* being intended for the publick *Good*, the *Execution* of them will be *so far only* necessary as the publick *Good* requires it.

To the same purpose we may observe, That as *Obedience* is the *End* of *Penalties*, so *Mercy* may properly be shewn to those *Persons*, who have offended rather thro' *Infirmity*, than *Malice*; and especially, if such *Offences* have no general *Influence*, and are not apt to encourage others by the like *Hopes* of *Favour*.

To which we may add one *Case* more. That forasmuch as a *future Amendment* is one of the particular *Ends* of *Penalties*, The *Magistrate* cannot be thought wanting in his *Duty*, if He pursues, on proper *Occasions*, that *End* by *Clemency*, which was the very *Design* of *Punishments*.

And

And as the general Rules now propos'd will serve to determine, how far the Rigours of Law may be *abated*, so will they serve equally to enforce the strict *Execution* of them in common and ordinary Cases. It is indeed the very Design of the Magistrates Office, To take heed that *the Publick receive no Prejudice*: and therefore, if a Liberty of *remitting* the Laws must be allow'd in those Instances; where the Publick is well secur'd,---as great a Strictness in the *Execution* of them will be found necessary, where the common Interest *demand*s it; and it is unreasonable to hope for Favour, where *Tenderness* to the *Criminal* must betray and expose the *Innocent*.

From these Observations it will appear how *Righteousness* and *Mercy* may be join'd together in the Administration of Government. To which we may add this farther Remark; That forasmuch as The Magistrate may, on different Occasions, judge it necessary to act in a very different manner, so He ought not to be rashly *censur'd*, as having either born too hard in some Cases, or *betray'd* the Laws in others. There may be abundant Reasons for such a Method of Proceeding; which do not appear to Persons at a Distance; who are neither concern'd to meddle in such Affairs, nor perhaps qualified to pass a Judgment on them. In Truth, it was with a View to this very Remark that I consider'd the Point before us; in the Decision of which I would not be understood to *direct* my Superiours, but to *justify* them.

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There remains another Question to be consider'd, which naturally arises from the foregoing Discourse; *viz.* How far *Subjects* may be thought to have discharg'd their Conscience by merely submitting to *Penalties*, without paying an *active Obedience* to *Laws*.

In Order to solve this Doubt let it be observ'd, *First*, That a strict Regard must always be had to the *Design* of the *Legislator*; since the *Obligation* of *Laws* will reach just so far, as the *Legislator intended* they should oblige.

I would observe, in the next place, That as, in most Instances, it must be the *Design* of *Legislators* that the *Directive* Part of their *Laws* should be observ'd *absolutely*, so it may happen, in some Cases, that a greater *Latitude* is intended: And tho' it cannot well be presum'd that any *Wise* man would enact a *Law*, without intending that the *Directions* of it should be in *some Sense* observ'd;—yet there is no *Absurdity* in supposing, that He may allow, and even prescribe an *Equivalent* to be made: In which Case, He who readily complies with such an Appointment, shall be justly esteem'd to have fulfill'd the *Law*, according to the *Intent* and *Design* of The *Legislator*.

To speak strictly, such *Laws* as these consist of *Two* Parts, without obliging *Subjects* *determinately* to *Either*; and, rightly understood, amount to thus much: *Either* such an *Act* shall be perform'd, or such a *Forfeiture* incurr'd. The *Person* concern'd is allow'd to chuse which he pleases: and the *Forfeiture* in

in this Case, is consider'd by the Magistrate as a full *Satisfaction*, or a reasonable *Communion* for not performing the Act directed.

If this Account be just, then Forfeitures of this Nature are not properly *Penalties*: They are not such *penal Sanctions*, as are intended to support and enforce Laws: And consequently, This Case, however it may appear at first sight, doth not relate to the Question before us.

The Penalties then, which are intended in this Question, are strictly speaking *Punishments*; and the Laws, to which the Subject is suppos'd not to have paid Obedience, are such, as The Legislator design'd should be observ'd *absolute*. These Observations having been noted, shall proceed in the following manner.

Either the Point commanded by the Legislator to be done, is, *in itself* lawful, and agreeable to the *Will* of God; or, it is not so. If it be either in itself *unlawful*,---or forbidden by exprefs *Revelation*, the not observing such a Command becomes a *Duty*; because we are under higher Obligations to obey God, than *Man*. And patiently to submit, for the sake of publick Peace, to Punishments in such a Case, is an Instance of true *Christian Fortitude*, and will entitle us to the especial Favour of God.

But supposing the Point be in reality the proper Matter of human Laws; yet, foras much as all Men are liable to *Error*, Difficulties may arise in the Minds of Subjects. They may possibly be *perswaded* that the Observation of

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of such a Law is disagreeable with the Will of God; And we are concern'd to Enquire, What ought to be determin'd in such a Case as this.

The Point now propos'd is 'The Case of an *Erroneous Conscience*; With reference to which, I think it is agreed by all sober Men, that such a wrong Perswasion will oblige so far, as to render that Person *criminal* who acts against it: But how far the obeying such an erroneous Conscience may *acquit* a Man in the Sight of God, is another Question.

If the Mistake arose from a Man's *Negligence*, or *Partiality*, or any other Cause which He *ought* to, and *might* have remov'd, then the Case is plain: He is properly The *Author* of his own Errors, and must answer for all the Consequences which follow from them.

But, if the Mistake be such, as was, in a human Way of speaking, *unavoidable*, we must then leave him to the *Mercy* of that God, whom He hath sincerely endeavour'd to obey. And to suffer patiently for not paying an *active Obedience* to that Law, which he is perswaded he ought not to observe, as it is the clearest Evidence of his own *Honesty*, so is it the best *Recommendation* to the Divine Favour.

The main Point however, is still behind. It remains to be enquir'd, Whether a Man hath discharg'd his Conscience by barely submitting to Penalties in those Instances, in which He hath no Scruples about the *Lawfulness* of Obedience; and when it plainly appears to have been the Legislator's *Intention* to require his Obedience.

I conceive there will be no Difficulty in deciding this Question, if we attend to the Remarks which I have already offer'd. As far as The Legislator hath a *Right* to command, and *intends* to oblige, so far must Subjects be under an *Obligation* to obey. By refusing therefore an Obedience, in such Cases, they must evidently contradict these Obligations, and become guilty in the Sight of God. To enforce the Observance of Laws *Punishments* are indeed appointed; and in case of Transgression, may justly be executed by The Magistrate: But these very Punishments, when rightly applied, do manifestly suppose *Guilt*. And, if to undergo the Sentence of the Law, in criminal Cases, be admitted as sufficient to render a Man *innocent*, we shall be oblig'd to allow some Conclusions, which every *Wise* man will explode, and every *Good* man must abhor.

Again, The very End of appointing penal Sanctions, is, Not that they may be *incurr'd* by Subjects, but *avoided*. They are intended as a Guard to those Laws, which thoughtless or licentious Men might otherwise be too strongly tempted to violate. But if, after all, They are hardy enough to break thro' these Restraints, shall we excuse them, merely for *enduring* those Penalties which they have brought on themselves? Methinks it is rather an Aggravation of their Fault, that they could not be restrain'd by those very Punishments which were before them; but, being insensible both of *Duty* and *Interest*, they have defeated

feated the *Intention* of their Law-givers, as well with regard to the *Penalties* threaten'd, as the *Action* enjoin'd.

It is true indeed, Men may be betray'd into the Violation of a Law, either thro' *Inadvertence*, or the Prevalency of some present *Passion*. It is not mine *Intention* to heighten and aggravate such Faults, if the Offender submits himself, without Reluctance, to the *Penalties* incurr'd; and learns to pay a future Obedience from the Experience of his former Folly.

But, what I am chiefly concern'd about, is, The Case of those Persons, who venture on the Transgression of a Law with a *view* to the very *Penalties* threaten'd by it; and, who are incapable of being reclaim'd, whilst they make their *Punishments* an Argument of their *Innocence*. — But, such Persons would do well to consider, that however they may venture to trifle with *Men*, yet *God* will not be mocked. The Magistrate is *his Minister*; and since He is so, *Divine Sanctions* will supply the Defects of those which are merely *Human*.

The *Advantages* which may arise from the Violation of our Duty are of no great Importance; and the *Pleasure* of gratifying an unruly *Passion* is mean and unsatisfactory. These very *Advantages*, or *Pleasures* will yet receive Abatements from *enduring* the *Punishments* which human Laws appoint, and even from the *Apprehension* of them. But, however this be, yet the *Wrath* of *God* is what no impenitent Sinner can either avoid, or bear. Hi

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Vengeance will pursue Offenders into the other World; and overtake those, who have either escap'd the Eye of the Magistrate, or defy'd his Power.

Thus have I gone thro' with the several Heads propos'd; but shall not dismiss this Subject without adding One Remark farther. As *Civil Sanctions* are design'd to enforce Laws on Subjects, who are too apt to be drawn into a Violation of them, so they must suppose a *Headlessness* of Temper, and a *Depravity* of Will in the Generality of Mankind. This is indeed the true State and Condition of things: and upon this Bottom we build the *Necessity* of appointing human Punishments.

But yet a Sense of what is *fit* and *becoming* in Life; ——— A Desire of contributing to *publick Good*; ——— and a Consciousness of what is owing from *Subjects* to their *Governors*, are apt to have a great Influence on every ingenuous Mind. With reference to such Persons, Civil Penalties are *unnecessary*; and these Enforcements of Law are *not made for the Righteous, but for the lawless and disobedient*. A modest and virtuous Man will be asham'd of doing an ill thing, tho' he be secure against the Effects of human Power, and even conceal'd from human Sight. His own Mind will be to him as Ten Thousand Witnesses and Avengers.

Sentiments of this Nature are farther strengthen'd by an Apprehension of The *Divine Being*; — of a *God*, who is every where present to *oversee* his Actions; — to

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approve and support him in doing well ; and to condemn and punish him for doing otherwise. So that a *Virtuous* and *Religious* Man will obey, Not for the sake of *present Wrath*, but of *Conscience* ; and discharge those Duties thro' *Inclination*, to which Others are forc'd by *Terror*.

These are by far the Noblest Principles ; and indeed the only ones which can deserve Praise : For, there is no real *Merit* in abstaining from irregular Pursuits, merely thro' the *Dread* of Punishment. The *inward* Temper may be still bad and vicious, however the *outward* Actions may be restrain'd.

The main Point therefore which we should labour after, is, To cultivate the Principles of *Virtue* and *Religion*. These will carry us thro' with Honour ; and support us in what is right, without the Aids of *human Terror* ; or, (if it should so happen,) in *Opposition* to it. In short, As they are the best Foundations, on which the *Interests*, and even *Safety* of Society can be built, so are they the only sure Methods to *recommend* us to Men, --- to *justify* us to our selves, --- and, (which is of infinitely greater Moment) to *make* us *approv'd* in the sight of God.



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